IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2174 OF 2006

Homi Hirji Kanga ..Petitioner

Vs.

Sarosh Hirji Kanga & Ors. ..Respondents

Mr.R.S.Apte i/b N.R.Bubna for the petitioner

CORAM : A.P.DESHPANDE, J

DATED : 22ND NOVEMBER, 2006

P.C.:

1. This writ petition is filed by the sole defendant against whom a suit has been filed by the plaintiff / partners of a partnership firm seeking dissolution of the partnership firm, rendition of accounts and distribution of the assets of the firm. During the pendency of the suit one Ms.Piroja Hirji Kanga, plaintiff no.1 expired who is the mother of the other plaintiffs and the defendant and, hence, one of the sons of the deceased by name, Jahangir Kanga made an application for impleading him as party defendant

to the suit as legal heir of the deceased. The said application came to be rejected.

2. At a later point of time, the original defendant moved an application for impleadment of Jehangir Kanga, whose application was already rejected, as legal heir of the deceased plaintiff no.1. In the said application, three fold submissions are made:

a) that to represent the estate of the deceased all the legal heirs are necessary parties and hence, Jahangir be permitted to be impleaded as party in the suit.

b) It is next contended that the other plaintiffs who are continuing the suit as legal heirs of the deceased, are claiming right and title to the property left behind by the deceased on the basis of a will and hence, it is submitted that there is a dispute in two groups; one claiming under a testament and other claiming by natural

succession.

c) Lastly, it is submitted that unless and until a probate is obtained in relation to the will, no right can be established in any court of law. Reliance is placed on s.213 (2)(ii) of the Indian Succession Act by contending that the will in question is said to have been executed at Bombay and part of the property is also situated at Bombay.

3. In all fairness, the learned counsel has also invited my attention to the provisions contained in Order 30 Rule 4 of the C.P.C. which declares that it shall not be necessary to join legal heirs of the deceased partner in the suit. If and incase no probate is produced, it shall be open for the defendant / petitioner to contend for dismissal of the suit, placing reliance on section 213 of the Indian Succession Act. The impugned order does not prejudice the petitioner in any manner.

4. Having regard to the totality of facts and circumstances, I decline to interfere with the impugned order. However, it is made clear that all contentions raised in this petition are left open to be agitated at appropriate time before the proper forum. Writ Petition disposed of accordingly.

(SHRI A.P.DESHPANDE, J)